

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION

ARLEN LEE HATTEN, Petitioner, vs. UNITED STATES OF AMERICA, Respondent.	5:16-CV-05030-KES ORDER
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Petitioner, Arlen Lee Hatten has filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241. The gist of his claim is that he was prosecuted in state and federal court for crimes arising out of the same facts and transaction. Plea agreements entered into in both state and federal court contemplated his sentences in each forum, imposed in the year 2010, would run concurrently with each other. See Docket No. 1. Mr. Hatten finished serving his state sentence and came into the custody of the federal Bureau of Prisons (BOP) in 2015. The BOP is calculating Mr. Hatten's release date based on consecutive, instead of concurrent, sentences, contrary to what the parties contemplated in their respective plea agreements. See Docket Nos. 1-2 and 1-3.

Based upon a review of the file and the underlying criminal case record it is noted the plea agreement in Mr. Hatten's federal case contemplated that defendant's state sentence would run concurrently with the defendant's federal sentence. See United States v. Hatten, 5:09-cr-50069-RHB, Docket No. 23,

page 6, ¶ K. The state court ordered that the state sentence run concurrently with Mr. Hatten's federal sentence. See Docket No. 1-1. Therefore, it appears petitioner's claim herein is congruent with the terms of the plea agreement.


The Court directs that the Petition in this case be served and that a response be filed. Accordingly,

IT IS ORDERED:

- (1) that the Clerk of Court shall serve upon Respondent and the United States Attorney for the District of South Dakota a copy of the Petition and this Order;
- (2) that within 21 days after service, Respondent is directed to show cause why a writ pursuant to 28 U.S.C. § 2241 should not be granted;
- (3) that as part of the government's response, Respondent shall produce the relevant state court file for review;
- (4) that Petitioner may file a reply within 14 days of service of the Respondent's response.

DATED this 11th day of May, 2016.

BY THE COURT:



VERONICA L. DUFFY
United States Magistrate Judge